

APPENDIX

ORDERS

NINTH CIRCUIT ORDER DENYING REHEARING

NINTH CIRCUIT MEMORANDUM DECISION

NORTHERN DISTRICT OF CALIFORNIA
SUMMARY JUDGMENT ORDER

OTHER DOCUMENTS

PLAN AND SUMMARY PLAN DESCRIPTION PROVISIONS

OPPOSING COUNSEL’S EMAIL—WILL NOT OPPOSE EXTENSION

PLAN AND SUMMARY PLAN DESCRIPTION PROVISIONS

The Merck & Co., Inc. Long Term Disability Plan for Non Union

Employees from 1999 through 2016 provided

3.1 Entitlement To Benefits. A Participant shall be entitled to benefits under the Plan upon:

- (a) completion of the Total Disability Eligibility Period; and,
- (b) satisfaction of the definition of Total Disability. (emphasis added)

3.5 Benefit Reductions. (a) Any benefit payable under the Plan shall be reduced by:

- (i) Social Security Benefits, effective at the time the Participant becomes entitled to benefits;...and provided further, that if a Participant does not apply for Social Security disability benefits, any benefit payable under this Plan shall be offset by an amount the Claims Administrator determines in its sole discretion could be received by the Participant; (emphasis added)

The 1999/2002 LTD Plan Summary Plan Descriptions (SPDs) provide:

Your LTD benefits are offset by certain other sources of income, as follows:

Social Security benefits (both primary and family disability or retirement benefits) that you and your eligible dependents are entitled to receive when you become eligible for LTD benefits. If you do not apply for Social Security disability benefits, your payments from the LTD Plan will be offset by an estimated Social Security amount.... (emphasis added)

The 2010, 2011, and 2012 SPDs have essentially identical language. They add specific details.

The amount of offset for Social Security benefits shall be computed at the time you qualify for LTD. Subsequent increases in Social Security benefits shall not be used to reduce LTD benefits. (emphasis added) SER1120, 1034, 1067, 944, respectively.

You are eligible to receive LTD benefits after you have been continuously Totally Disabled for 26 consecutive weeks.

If you are approved to receive LTD benefits, benefits will begin to accrue on the date following the day you complete your benefit Eligibility Period.

Cal. Ins. Code § 10127.1(b):

(b) No self-insured employee welfare benefit plan providing loss of time benefits shall contain any provision for a reduction of such benefits during a benefit period because of an increase in benefits payable under the Federal Social Security Act, as amended. Cal. Ins. Code § 10127.1(b)

BOB NICHOLS

From: Rebecca Hull <rhull@grsm.com>
Sent: Tuesday, March 06, 2018 1:36 PM
To: 'rbn@nicholslawgroup.com'
Subject: RE: Jones v. Merck & LINA

I have appeared for every entity named in the judgment from which you appealed, which therefore are the only appellees to the appeal.

My clients have decided not to oppose your asserted need for additional time to prepare a cert petition.

From: BOB NICHOLS [<mailto:rbn@nicholslawgroup.com>]
Sent: Monday, March 05, 2018 7:56 AM
To: Rebecca Hull
Subject: RE: Jones v. Merck & LINA

You have not made appearances for the Disability Plan, Merck Umbrella Plan, or Merck & Co., Inc. Was that intentional?

From: Rebecca Hull [<mailto:rhull@grsm.com>]
Sent: Wednesday, February 28, 2018 4:45 PM
To: 'rbn@nicholslawgroup.com'
Subject: RE: Jones v. Merck & LINA

I am the only attorney for the appellees. My contact information is as indicated in the notice of change of counsel that was filed with the court a few weeks ago.

From: BOB NICHOLS [<mailto:rbn@nicholslawgroup.com>]
Sent: Thursday, February 15, 2018 11:11 AM
To: Rebecca Hull
Subject: RE: Jones v. Merck & LINA

The printer needs a current service list. Please send me a list of the current attorneys on your side together with mailing addresses, phone numbers, and email addresses.

From: Rebecca Hull [<mailto:rhull@grsm.com>]
Sent: Tuesday, February 13, 2018 4:07 PM
To: 'rbn@nicholslawgroup.com'
Subject: Jones v. Merck & LINA

Bob,

Could you please confirm that you will not be further pursuing this matter? I would like to close my file now.

Thanks.

Rebecca Hull

Alabama * Arizona * California * Colorado * Connecticut * Florida * Georgia * Illinois * Maryland * Massachusetts * Missouri * Nebraska * Nevada * New Jersey * New York * North Carolina * Ohio * Oregon * Pennsylvania * South Carolina * South Dakota * Texas * Virginia * Washington * Washington, DC * West Virginia

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